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Henry Walker
(615) 252-2363
Fax (615) 252-6363
Email hwalker@boultcummings.com

T.R.A. DOCKET ROOM

April 7, 2004

Hon. Kim Beals, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, Tennessee 37243

Re *Complaint of US LEC of Tennessee, Inc Against Electric Power Board of
Chattanooga*
Docket No. 02-00562


Dear Hearing Officer Beals:

Enclosed please find the original and fourteen (14) copies of the Post-Hearing Brief of
US LEC of Tennessee, Inc.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/k

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: COMPLAINT OF US LEC OF)
TENNESSEE, INC. AGAINST ELECTRIC) DOCKET NO. 02-00562
POWER BOARD OF CHATTANOOGA)

POST-HEARING BRIEF OF US LEC OF TENNESSEE, INC.

US LEC of Tennessee, Inc. ("US LEC") submits the following post-hearing brief in the above-captioned complaint against the Electric Power Board ("EPB").

SUMMARY

There is no serious question in this case that the EPB name and reputation (the "brand") have value and that, by allowing EPB Telecom the free use of that brand, EPB is providing a subsidy to its telecommunications division. In order to remedy this subsidy, the telecommunications must either compensate EPB for the use of the brand or discontinue using it. Putting a dollar value on EPB's name and reputation would inevitably be both subjective and controversial. The end result, if too low, would be unfair to electric ratepayers. If too high, it would be unfair to telephone customers. The cleaner and more easily enforceable solution is for the telecommunications division to market its services under a new name. Just as the division was prepared to operate and sell high-speed internet access services under the name MetroNet, it can just as readily operate and sell telephone service without using the EPB brand.

Just changing the name, however, is not enough. To insure that the prohibition against a subsidy is enforced on a going forward basis, the company's Code of Conduct must be clarified. The Code, which was approved by the Tennessee Regulatory Authority as a condition for allowing EPB into the telecommunications business, currently states that EPB and EPB Telecom

may engage in a limited amount of joint marketing "provided that the customer is informed of the separate identities of each."¹ Claiming that this provision applies only to the joint "sales" of electricity and telephone service, EPB has ignored the requirement as it relates to the joint advertising of telephone and electric service.

The Code of Conduct is important because the Code itself requires that EPB's internal auditors annually test "the compliance of the telecommunications division and the electric system" with the provisions of the Code.² As a result of an earlier decision by the Hearing Office in this case, EPB's auditors are now required to file their report with the TRA where the report is available for public inspection.

In order to effectively enforce the prohibition against subsidization, the Code of Conduct must plainly spell out that the telecommunications division cannot engage in marketing or advertising which leverages its affiliation with EPB in order to sell telephone service. EPB's internal auditors will then be responsible for monitoring compliance with that provision and reporting any violations to the TRA.

STATEMENT OF FACTS

In pre-filed testimony, as well as during the hearing, US LEC provided the TRA with numerous examples of the manner in which EPB allows its telecommunications operations to leverage the EPB brand through marketing and advertising activities.³ In his pre-filed direct testimony, EPB witness Mike Moeller, US LEC's former director of sales in the Chattanooga

¹ A copy of the Code of Conduct is attached to US LEC's Complaint. See attachment to Complaint, at p 16

² Id. at p 19.

³ Examples of this behavior were also provided in Paragraph 6 of the Complaint and the exhibits attached to the Complaint

area, described an EPB exhibit booth at a Chattanooga business fair where EPB advertised both its electric service and its telecommunications services.⁴ Mr. Moeller testified that the booth contained “a mix of power and telecom equipment, power and telecom marketing banners (information boards).”⁵ According to Mr. Moeller, “[t]here was no clear distinction between EPB Power and EPB Telecom within the booth.”⁶ (At the hearing, counsel for EPB questioned Mr. Moeller about his observations regarding the booth, asking him whether he witnessed EPB selling bundled electric and telecommunications services.⁷ This is simply a red herring, as US LEC has never alleged that EPB is engaged in selling bundled service offerings. The issue is not whether EPB is marketing bundled services. The issue is whether EPB is marketing in a manner that blurs the line between its electric and telecom operations)

Other examples of EPB’s illegal behavior involve sales tactics by EPB sales representatives, postings on EPB’s website, joint marketing activities, and press releases issued by EPB. As for the sales tactics of EPB Telecom, Mr. Moeller testified that he had personally witnessed EPB Telecom sales persons referring to the telecommunications division entity simply as “EPB,” as well as making statements such as “we have been around for seventy years.”⁸ Jason McVay, a former salesperson for EPB Telecom, stated in his testimony, “We were told people are going to buy from EPB because of the EPB brand. We’re going to sell off the EPB

⁴ Direct Testimony of Michael G. Moeller, p. 1 (November 21, 2003) (“Moeller Direct”)

⁵ Id.

⁶ Id.

⁷ Hearing Transcript, p. 101

⁸ Moeller Direct, p. 2

brand.”⁹ Mr. McVay also testified that EPB salespersons used “...all of the EPB Power literature, folders, and letterhead” and that he presented proposals to potential customers in EPB Power folders.¹⁰ As for the EPB website, there are numerous postings which clearly make no effort to distinguish between the electric division of EPB and the telecom division. For example, exhibit two, attached to Mr. Moeller’s direct testimony, contains a paragraph entitled “Welcome to EPB ” The paragraph states:

We’re more than a power company, we’re a powerful resource dedicated to providing the services you depend on most at work and at home. With over 156,000 customers and more than sixty years of experience in providing reliable, low-cost electric power, we’re one of the nation’s largest publicly-owned utilities, and one of the fastest growing Telecommunications companies. What can we do for you today?¹¹

Exhibit three, also attached to Mr. Moeller’s direct testimony, is a page from EPB’s web site which contains statements such as “EPB is becoming more than a power company” and “But whether you have electric, telecommunications or other services from EPB, one thing will never change—the way we’ve always put the needs of our customers first. It’s a way of doing business that’s served us well for more than six decades—a philosophy which is, indeed, more current than ever ”¹² Finally, exhibit four, which contains a paragraph regarding reliability, states that “Everything we’ve learned over the years about keeping the lights on .has been put to

⁹ Rebuttal Testimony of Jason McVay, p 2 (February 13, 2004)

¹⁰ Hearing Transcript, p 246

¹¹ Moeller Direct, Exhibit 2

¹² Id., Exhibit 3

good use in our telecommunications delivery. So, you can be sure your phone service will be as reliable as your power service.”¹³

EPB’s joint marketing activities also provide examples of how the telecommunications division leverages the EPB name and reputation. For example, one advertisement states,

Hear the one about the power company that got into the phone biz?
... Imagine your phone and power sources coming from one source. We’re thinking about EPB, the power company you can expect more from.¹⁴

A second example can be found in EPB’s advertisements in the yellow pages. Exhibit six, attached to Mr. Moeller’s direct testimony, contains an advertisement which states, “Now serving your electric power and telecommunications needs. EPB. More Current Than Ever.”¹⁵

A second advertisement, exhibit seven of Mr. Moeller’s testimony, is entitled “the EPBT advantage,” and states, “Our name carriers over 70 years of trust, service and dedication.”¹⁶

Finally, an example of how EPB Telecom leverages the name and reputation of EPB can be found in a press release dated July 16, 2001, in which a customer is quoted as saying that he purchased telecommunications services from EPB because “EPB already had a superb reputation in Chattanooga. Few companies offer the same dedication to both community and customer service that EPB does and that philosophy has carried into their Telecommunications Division.”¹⁷

¹³ Id., Exhibit 4

¹⁴ Copy attached to Response to Motion for Summary Judgment, filed by US LEC on February 19, 2003

¹⁵ Moeller Direct, Exhibit 6

¹⁶ Id., Exhibit 7

¹⁷ Id. at p. 4, Exhibit 9

EPB's practice of intentionally blurring the line between EPB electric and EPB Telecom was so apparent that it was addressed by EPB itself in a company newsletter.¹⁸ An article in the newsletter, entitled "EPB Telecom Completes Brand Awareness Study," states that "What we [EPB] can't determine is whether or not some of the recognition consumers had of EPB Telecom is because they are just familiar with EPB Electric Power."¹⁹ On the same page as the article, there is a note regarding the changing of the logo of the telecommunications division²⁰ According to the text, the name change was necessary because

[t]he identifier "Telecommunications" which was positioned underneath the EPB logo was being overlooked by the consumer. They were only registering EPB—linking this in their minds directly to power. This has contributed to people being unaware that EPB is in the Telecommunications business. The logo change emphasizes Telecom. We believe this change will help consumers instantly recognize the difference between EPB Telecom and EPB Electric Power.²¹

In other words, as recently as January, 2003, almost a year after this case was filed, EPB itself acknowledged that customers who saw the EPB Telecom logo "were only registering EPB." There could hardly be clearer evidence of the ubiquity and value of the EPB brand and the public perception that EPB and EPB Telecom are one and the same

As Mr. McVay testified, EPB Telecom, despite the slight change of its logo last year, continued to sell telephone service by selling the EPB brand.²² They are still doing so today. Even as the Hearing Officer deliberates whether EPB is subsidizing EPB Telecom by giving the

¹⁸ See "EPB Telecom Completes Brand Awareness Study," January 10, 2003 (Hearing Exhibit L)

¹⁹ Id

²⁰ See Hearing Exhibit L

²¹ Id

²² Hearing Transcript, pp. 235-236

telecommunications division free use of the EPB brand, the power company's current web site boasts that it is "becoming more than a power company" and that they will put customers first "whether you have electric, telecommunications or other services from EPB."²³ Furthermore, in an article in the April 1st edition of The Chattanooga Times-Free Press, business editor Dave Flessner profiled the new head of EPB Telecom.²⁴ Throughout the profile, the writer uses "EPB," "EPB Telecom," and the "EPB phone company" interchangeably.²⁵ Notably, the head of the telecommunications division is quoted at the end of the piece as saying "EPB is a good company to build upon "²⁶

Based on this evidence, as well as upon his own understanding of how economists measure value and what constitutes a subsidy, US LEC's expert witness Dr. Christopher Klein, an associate professor in economics at Middle Tennessee State University and former chief economist at the TRA, testified that EPB's "brand, reputation, and goodwill" have value.²⁷ EPB witness Harold DePriest agreed.²⁸ Dr. Klein testified that the free use of that brand has allowed EPB Telecom to "enjoy[] a competitive advantage over other new entrants" who have to pay additional costs to try to obtain the name recognition and favorable reputation that EPB Telecom

²³ Moeller Direct, Exhibit 3 (The page containing these statements was still on the EPB web site as of April 6, 2004)

²⁴ A copy of the article is attached

²⁵ Id

²⁶ Id.

²⁷ Rebuttal Testimony of Dr. Christopher C. Klein, p. 4 (February 13, 2004) ("Klein Rebuttal"), see also Hearing Transcript, p. 115

²⁸ Hearing Transcript, p. 203

receives from EPB at no charge.²⁹ The “use of a valuable asset without paying for it” constitutes a “subsidy,” Dr. Klein concluded, “just as if EPB allowed EPB Telecom to use a portion of its existing office space without pay rent.”³⁰

DISCUSSION

A. US LEC's Position

A company's brand is not developed for free, nor is it valueless once it is created. As Dr. Klein explained, when valuing businesses as a whole, economists place values on brands.³¹ Dr. Klein pointed out that “businesses invest money in developing those brands. So they have value. We couldn't be here having this proceeding if the EPB brand didn't have value because EPB wouldn't want it. They wouldn't care about using it. US LEC wouldn't care if they did. So it seems obvious to me that there's value to the EPB brand.”³² Furthermore, during the hearing, when asked by counsel for US LEC whether he thought EPB's reputation and good will was a “valuable commodity,” Harold DePriest, president of EPB, testified, “I certainly think that EPB's reputation and good will is valuable.”³³

There can be no dispute—and EPB has not disputed—that the telecommunications division benefits substantially from the use of the EPB brand. One can only speculate what it

²⁹ Klein Rebuttal, p. 5, see also Hearing Transcript, pp. 171-172

³⁰ Klein Rebuttal, p. 5, see also Hearing Transcript, p. 116

³¹ Id. at p. 115

³² Id.

³³ Id. at p. 203

would have cost the telecommunications division to obtain the kind of name recognition and good will in the Chattanooga area that the division acquired instantly through the use of the EPB brand, a brand which has been built over seventy years at the expense of electric ratepayers. State law prohibits such a subsidy.

As discussed at the hearing, there are two solutions that could remedy this illegal subsidy. In his testimony, Dr. Klein stated that EPB Telecom could either compensate EPB for using the EPB brand or EPB Telecom could do business under a name that does not incorporate the EPB brand.³⁴ Dr. Klein explained that because of the difficulty in trying to value the EPB brand and the potential unfairness to either electric or telephone ratepayers if the estimate of value is inaccurate, he recommended the "cleaner" and "easier to enforce" solution of requiring EPB Telecom to do business under another name.³⁵ Dr. Klein stressed, both in his prefiled testimony and under questioning from the Hearing Officer, that requiring EPB Telecom to change its name need not be an onerous undertaking. For example, when questioned by the TRA as to how far the requirements must go, Dr. Klein testified that the TRA need not take a "hard-line" approach but should instead focus on the heart of the matter: the telecommunications division should do business under a name that does not incorporate the EPB brand and, in its marketing and advertising, should not capitalize on its relationship with EPB.³⁶

When considering the appropriateness of requiring EPB Telecom to change its name, it should be emphasized that telecommunications companies change names often. As demonstrated by the TRA's own conference agendas, name changes are common in the

³⁴ See Hearing Transcript, pp. 118-120.

³⁵ Klein Rebuttal, p. 9.

³⁶ Id. at pp. 185-186.

telecommunications industry. Although Mr. DePriest testified that selling telephone service under a name other than EPB Telephone would be “administratively unworkable,”³⁷ he also testified that, until six months prior to the hearing, EPB’s telecommunications division was planning on operating and selling a high-speed internet access service under the name “MetroNet.”³⁸ If EPB’s telecommunications division could sell internet access under the name MetroNet, it is clearly not “administratively unworkable” for the division to sell telephone services under a name other than EPB Telecom. Just like the other companies that change their names, EPB Telecom could change its d/b/a and begin running advertisements informing the public of the name change.³⁹ The change need not occur overnight, nor is US LEC suggesting that EPB Telecom try to hide its relationship with EPB,⁴⁰ only that EPB Telecom stop leveraging the name recognition and reputation of EPB to subsidize the sale of telephone services.

B. EPB’s Position

Based on the closing arguments of counsel, EPB seems to base its defense to this complaint on two main arguments (1) the uncompensated use of the EPB brand is not a “subsidy,” as that term is used in T.C.A. § 7-52-402, because there is no “shifting of costs” from EPB to EPB Telecom; and (2) since no one raised the subsidy issue in 1999 when EPBT obtained its certificate, it would be unfair to now require EPB Telecom to change its name. The first argument is at odds with the uncontradicted testimony of Dr. Klein and makes no sense

³⁷ Rebuttal Testimony of Harold DePriest, p. 2 (December 22, 2003)

³⁸ Hearing Transcript, pp. 213-217

³⁹ EPB Telecom’s customers could simply be notified of the name change using the procedure set out in TRA Rule 1220-4-2-56

⁴⁰ The Hearing Officer has already ruled that the use of EPB name “strictly for identification purposes” does not constitute an illegal subsidy but that issues regarding the “leveraging” of the EPB brand remain to be tried. Order, Issued July 24, 2003, at p. 3

from an economic or legal standpoint. The second argument, at bottom, constitutes a plea to allow EPB to continue violating state law.

Counsel for EPB argued in closing that "the law is very clear that a subsidy is a cost shift."⁴¹ He contended, "There is no evidence of that occurring."⁴² But there is. As Dr. Klein explained, the uncompensated use of the EPB brand is no different than the free use of EPB's office space or an interest free loan from EPB to the telecommunications division.⁴³ Even counsel for EPB seemed to understand that the free use of space or the free use of money would constitute an illegal subsidy in violation of the statute.⁴⁴ It should be equally clear that the electric ratepayers have invested millions of dollars in building the EPB brand, that the EPB brand "is valuable,"⁴⁵ and that the telecommunications division has saved, and will continue to save, millions of dollars through the free use of that brand.⁴⁶ Without spending a dollar, EPB Telecom, from the first day of its existence, has enjoyed widespread name recognition and a reputation for customer service and reliability. Electric ratepayers paid for that reputation and, as Dr. Klein testified, are at risk if that brand is tarnished by EPB's telecommunications

⁴¹ Hearing Transcript, p. 257. A "cost shift," of course, does not necessarily involve cash transactions. A cost shift, or subsidy, may occur whenever something of value is provided at less than its cost by EPB to its telecommunications division. Legally, a "subsidy" has been defined as a "grant of funds or property." It is "an artificial way of encouraging an industry or enterprise otherwise than by increasing the value of the products." Klies v. Liannane, 156 P.2d 183, 185 (Mont. 1945) (emphasis added); See also 83 Corpus Juris Secundum, at 760.

⁴² Hearing Transcript, p. 257.

⁴³ Id. at pp. 153-154.

⁴⁴ Id.

⁴⁵ Id. at p. 203.

⁴⁶ See Id. at pp. 171-172.

operations.⁴⁷ But those electric ratepayers receive no compensation for the use of the brand or for taking that risk. Clearly, as Dr. Klein testified, "Yes," there has been a shifting of costs from EPB Telecom to EPB.⁴⁸ When EPB argues there is "no evidence of a cost shift," counsel is simply wishing away both common sense and the uncontradicted testimony of US LEC's expert economist.

EPB's other main argument is that, since Mr. DePriest told the TRA during EPB's application hearing in October, 1998, that EPB wanted to put the "EPB brand" on its telecommunications services, that the TRA was aware of the potential subsidization problem. Since the TRA did not raise the issue, EPB argues that the agency implicitly ruled that the uncompensated use of the EPB brand would not create a subsidy. Legally, of course, this argument holds no weight. Even Mr. DePriest acknowledged that the cost allocation procedures approved by the TRA when EPB was granted a certificate could later be amended, if needed, to include other factors.⁴⁹

More to the point, perhaps, is the response of Dr. Klein, who was on the TRA staff at the time of the EPB application hearing. Asked if "it was clear at the time the EPB brand would be involved," Dr. Klein answered that it was not clear at all how heavily EPB's telecommunications division intended to rely on EPB's name and reputation in selling telephone service.⁵⁰ Dr. Klein's response, which also goes to the issue of how EPB Telecom could operate under a new

⁴⁷ Klein Rebuttal, p. 7

⁴⁸ Hearing Transcript, p. 171

⁴⁹ Id. at pp. 211-212

⁵⁰ Id. at pp. 141-142

name, is worth repeating verbatim. Asked if Mr. DePriest had informed the TRA that they wanted to offer telephone service worthy of the EPB brand, Dr. Klein answered:

A. Well, I think it was clear that the EPB name would be involved, and that's a little bit different -- now, he does say brand there. I'm not disputing what he said. I'm just disputing as to what people may have thought about that at the time. Just because you say the EPB brand -- I mean, the EPB brand could be a little logo at the bottom of your ad. You know, that could be the EPB brand, and I don't think anybody would have any problem with that if that's all it was.

Q. If we used --

A. But we didn't know the extent to which you were going to say -- talk about how great a company EPB Electric has been, how great a service they've provided for years and years, and then try to associate that with the telecom operation also. So there's a difference of degree that I think maybe people did not anticipate at the time of the certification hearing.

Q. So if I understood your testimony, the EPB logo standing alone is fine for EPB Telecom to use?

A. Well, I think it's just like if you had -- you know, rename EPB Telecom. Call it City Networks or whatever you want to. On your ads, you know, as long as it's not huge, I think you could have the EPB logo, if there is such a thing. You could have a little statement at the bottom that says City Networks, a division of Chattanooga Electric Power Board or a division of EPB, and I don't think anybody would complain.

Q. So it's okay if the business community knows that this is part of EPB?

A. Yeah, if all you do is just say, We're a division of EPB. And I think there's even some allowance for that somewhere you could use the EPB name for identification purposes. So you can say, Yeah, we're a division of EPB.

Q. So --

A. That's different from saying -- listing out all the great things EPB Electric has done for 60 years and then saying, You

name, is worth repeating verbatim. Asked if Mr. DePriest had informed the TRA that they wanted to offer telephone service worthy of the EPB brand, Dr. Klein answered.

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Q. So --

A. That's different from saying -- listing out all the great things EPB Electric has done for 60 years and then saying, You

can get all of this great stuff from EPB Telecom, even though we haven't been around but for -- what is it now -- five years or so.⁵¹

It is one thing, as Dr. Klein said, "to put a little logo at the bottom of your ad." It is quite another to build an advertising campaign around "selling the brand."⁵² One might easily be considered immaterial; the other is clearly a significant shifting of costs from EPB to EPB Telecom.

Finally, EPBT argues repeatedly that it would be "unfair" to make EPB Telecom operate under new name after "five years" of investing in the EPBT name. As previously noted, however, the real investment in the EPB Telecom name is the investment in the name "EPB" which was paid for by electric ratepayers over the last seventy years. As previously discussed, EPB's own evidence demonstrated that, as recently as January, 2003, customers who saw the EPB Telecom logo only registered the name EPB. Furthermore, the argument that EPB Telecom has spent five years building the "EPB Telecom" brand (and implying that US LEC waiting too long to bring this complaint) plays loosely with the actual time EPB Telecom has been fully operational. As Mr. DePriest testified, the telecommunications division required an initial start up period and the division's first "full [fiscal] year to make our sales" was fiscal year 2002 (July 2001 through June, 2002).⁵³ This complaint was filed in May, 2002. Any advertising money spent by EPB Telecom since that time was spent with knowledge that US LEC had raised the cross-subsidy issue and had asked in the Complaint that the TRA order EPB Telecom to operate under a different name. Throughout this period, EPB Telecom has continued to enjoy the free

⁵¹ Id at pp 141-143

⁵² See Id at p 231

⁵³ Id at p 213

use of the EPB brand while instructing its sales staff to leverage the brand name in order to sell telephone service. There is nothing "unfair" about finally bringing this illegal subsidy to an end

Clearly there will be some costs associated with the transition to a new name, but as Dr. Klein testified, "The presence of costs associated with the remedy does not make the subsidy legal."⁵⁴ Dr. Klein also noted that, even if the TRA orders a name change, EPB Telecom has "received the benefit" of the EPB brand for several years, the advantage of which may outweigh the costs associated with a name change.⁵⁵ Finally, Dr. Klein observed that the use of a transition period could mitigate the costs of a name change and that EPB Telecom must be allowed "sufficient flexibility that it can efficiently inform its customers of the change."⁵⁶ US LEC believes that reasonable measures can be taken so that the impact of a name change will not unduly burden EPB or its customers. It will, however, put an end to a subsidy that has been used to give EPB's telecommunications division an unfair and illegal advantage over its competitors.

CONCLUSION

Through the joint use of the EPB name, the joint marketing efforts which depict EPB's telecommunications and electric divisions as one entity, and the telecommunications division's efforts to promote sales by emphasizing the good will, history, reputation, and reliability of EPB's electric operations, EPB continues to operate in disregard of T.C.A. § 7-52-402. To remedy this ongoing statutory violation, US LEC respectfully requests that the TRA order EPB Telecom to change its d/b/a so that the illegal subsidy will cease and to rewrite the carrier's Code

⁵⁴ Klein Rebuttal, p 10

⁵⁵ Id

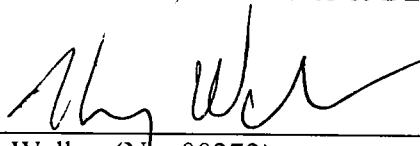
⁵⁶ Id at p 11

of Conduct to make it clear that the telecommunications division cannot continue to sell telephone service based on the name and reputation of EPB.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By



Henry Walker (No. 00272)
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363

ATTACHMENT

NEW YORK — Coca-Cola Enterprises Inc. on Wednesday reaffirmed its 2004 earnings forecast of \$1.42 to \$1.46 a share, which is an 8 percent to 10 percent increase from last year's results.

The Atlanta company, which is Coca-Cola Co.'s largest bottler, said it continues to expect its operating income will rise 5 percent to 6 percent to a range of \$1.56 billion to \$1.58 billion this year, said President and Chief Executive John Alm, speaking at the Credit Suisse First Boston conference, which was webcast.

Analysts expect Coca-Cola Enterprises' 2004 results to be near the top end of the forecast range with an average estimate of \$1.45 a share.

Wire Services

their tracks," Siegel said. "We have to have new labor agreements this summer. We have to be ready."

For labor leaders, though, Siegel's call to arms has a familiar ring. Management issued similarly dire warnings before and during US Airways Group Inc.'s bankruptcy proceedings, and labor responded by providing roughly \$1 billion a year in concessions to help the airline cut its annual costs by \$1.9 billion a year.

The unions were told at the time that those cuts, while painful, would allow the airline to be competitive.

Now management is seeking another round of cuts of a similar magnitude.

The airline's machinists' union issued a harsh critique of Siegel on Tuesday, labeling his management "incompetent" and

David Siegel, president and CEO of US Airways, speaks at a news conference at the Douglas Airport in Charlotte, N.C.

saying "he has failed us all" by failing to have a successful business plan after bankruptcy.

"It is painfully evident that David Siegel's bankruptcy restructuring did nothing but reduce labor costs while failing to similarly reduce nonlabor costs," IAM district president Randy Canale wrote in a memo to union members.

Jack Stephan, head of the US Airways unit of the Air Line Pilots Association, said Siegel has been essentially a one-trick pony, harping on the need to cut workers' pay and unwilling to make the structural changes necessary for the airline's survival.

Siegel "is a great guy to recognize that the sky is falling, but we expect more of our leadership," said Stephan, whose union has called for Siegel's resignation.

Shares of the reorganized airline exceeded \$10 a share last year, but have since traded at less than \$5 each. Earlier this month, the airline restructured the terms of a \$900 million federally guaranteed loan to avoid possible default. And the airline's independent auditor issued a warning about the company's future viability.

Management says that when it developed its business plan in bankruptcy, it had no way to

PROFILE

EPB Telecom chief knows about boosting startups

BY DAVE FLESSNER
BUSINESS EDITOR

Eight years ago, Kathy Harriman left Nashville's biggest phone company to work for one of the city's smallest.

"After 25 years with BellSouth and AT&T, I was ready for a change and a challenge," the Nashville native recalled.

But the challenge initially proved to be much greater than even the usually optimistic Ms. Harriman envisioned. In 1997, Ms. Harriman became the Nashville general manager of the predecessor to what became Adelphia Business Solutions. When she arrived, she discovered the company had only a couple of employees and few customers in Nashville.

Ms. Harriman, who followed her mother's career by joining Ma Bell after graduating from college, recalls sitting in her new office and crying about what she feared may have been a

career mistake.

But she didn't shed many tears before she quickly helped build the upstart phone business into Nashville's biggest competitor to BellSouth. Now, EPB hopes Ms. Harriman can do the same for its telecom division.

On March 1, Ms. Harriman was hired to the \$120,000-a-year job as head of EPB Telecommunications. She is the third EPB Telecom vice president in the four-year history of the business and succeeds Bill Chapman, who left in 2003.

EPB President Harold DePriest is confident he has a strong leader to help EPB Telecom to grow and prosper.

"Kathy has tremendous experience in building a successful, competitive phone business in Nashville," Mr. DePriest said. "We're hoping she will do

See HARRIMAN, Page C5



STAFF PHOTO BY KATHLEEN COLE

Kathy Harriman is the new EPB telecommunications vice president.

Personal

■ **Name:** Kathy Harriman

■ **Title:** Vice president of EPB Telecommunications

■ **Education:** A 1972 graduate of the University of Tennessee

■ **Career:** She worked in a variety of jobs at BellSouth from 1971 to 1996 before being named general manager of Adelphia Business Solutions in Nashville in 1997. She joined EPB Telecommunications on March 1.

■ **Personal:** A Nashville native, she and husband, Bob, have two grown daughters and four grandchildren.

■ **Volunteer activities:** While in Nashville, she was a board member of the Nashville Better Business Bureau, Special Olympics and Nashville Sports Council and was a member of the Nashville Chamber of Commerce and the Downtown Rotary Club.

Georgia Poultry

ATLANTA (AP) — The Georgia f o b dock—quoted price on broilers and hens for next week's trading advanced 50 to 74.25 based on full truck load lots of ice pack USDA grade "A" sized 2 to 3 pound birds.

The market is somewhat higher and the live supply is adequate for a mostly good demand. Average weights are desirable.

The f o b dock quoted prices on ice pack parts based on truck load and pool truck load lots for next week's trading are, line run tenders \$2.54; skinless boneless breasts \$2.28 whole breasts \$1.22; boneless skinless thigh meat \$1.17 leg quarters 34.50 and wings \$1.29 and 1/2 cents.

Demand on line run tenders is very good to normal, mostly very good to good. skinless boneless breasts is normal to good, mostly normal. whole breasts is good to normal, mostly good; boneless skinless thigh meat and leg quarters is light to good, mostly normal; while the demand on wings ranges very good to occasionally light, mostly normal.

Tennessee Livestock

NASHVILLE (AP) — Results from Tennessee cattle auctions Tuesday at Cookeville:

Receipts: this week 456, last week 675, last year 828

Trends: According to the Federal-State Market News Service, compared to last week slaughter cows steady to 200 higher. Bulls steady. Feeder steers 200 to 600 higher. Feeder heifers steady to 400 higher.

Slaughter cows 29 head, bulls 20; total feeders 354 head; feeder supply, steers 185 head, heifers 159 head; steers and heifers over 600 lbs 87 head, replacement and/or feeder cows 53 head.

Slaughter cows breakers 75-80 percent lean 900-1500 lbs 48.00-51.00, boner 80-85 percent lean 950-1400 lbs 45.50-49.00; lean 85-90 percent lean 800-1200 lbs 41.00-41.50.

Slaughter bulls 1: 1000-2100 lbs 58.50-64.00 high dressing to 67.50 low dressing to 50.50.

Feeder steers, medium and large 1-2 200-250 lbs 130.00-137.00; 300-350 lbs 129.00-137.00; 300-350 lbs 128.00-135.00; 350-400 lbs 124.00-129.00, 400-450 lbs 115.00-122.00; 450-500 lbs 111.00-117.00; 500-550 lbs 101.00-110.50; 550-600 lbs 96.00-103.00, 600-700 lbs 90.00-97.00.

Feeder steers, small 1-2 400-500 lbs 85.00-98.00, 500-600 lbs 84.00-91.00.

Feeder steers, medium and large 3 250-300 lbs 110.00-114.00; 300-350 lbs 112.00-123.00; 350-400 lbs 112.00-122.00; 400-450 lbs 99.00-115.00; 450-500 lbs 99.00-106.00.

Feeder bulls, medium and large 1-2 400-450

Metals

	(In U.S. Dollars per metric ton)			
	Prev	Askd	Closd	Askd
ALUMINUM (High Grade)				
Spot	1724 1/2	1705 1/2	1668	1689
Forward	1724 1/2	1723	1696 1/2	1687
COPPER CATHODES (High Grade)				
Spot	3056	3057	3065	3087
Forward	2966	2967	2963	2965
LEAD				
Spot	819	821	837	839
Forward	814	816	827	828
NICKEL				
Spot	13820	13845	13840	13950
Forward	13600	13825	13900	13910
TIN				
Spot	8535	8545	8410	8430
Forward	8435	8440	8390	8350
ZINC (Special High Grade)				
Spot	1087 1/2	1089 1/2	1090	1091
Forward	1104	1105	1106	1107

Not quoted

GOLD

100 Troy oz. - dollars per troy oz.				
Apr 04	421.00	428.00	427.30	+5.50
May 04			427.80	+5.80
Jun 04	422.80	428.50	421.60	+5.50
Jul 04	428.00	429.50	425.90	+5.50
Aug 04	427.00	430.50	427.00	+5.60
Sep 04	429.00	431.00	431.20	+5.80
Oct 04	429.00	432.00	432.20	+5.60
Nov 04	431.00	433.00	433.50	+5.70
Dec 04	431.00	435.00	435.00	+5.90
Jan 05			437.20	+6.00
Feb 05	435.50	438.70	435.90	+6.20
Mar 05			440.30	
Apr 05	441.80	443.40	441.80	+6.50
May 05			448.80	+6.70
Jun 05			452.20	+6.90
Jul 05			460.20	+7.10
Aug 05			466.50	+7.30
Sep 05			472.30	+7.50

Est. sales Tue's sales 104025

Tue's open int. 295044

5,000 troy oz. - cents per troy oz.

Apr 04	776.0	795.0	777.5	793.6
May 04				794.5
Jun 04	780.0	797.0	779.0	+17.0
Jul 04	780.0	798.5	798.5	+16.9
Sep 04	782.5	797.5	780.5	+18.5
Oct 04				797.2
Nov 04	797.2	797.2	797.2	+16.6
Dec 04	795.0	797.5	797.5	+16.6
Jan 05				797.5
Feb 05	792.0	799.0	792.0	+15.5
Mar 05				795.3
Apr 05	792.0	799.0	792.0	+14.3
May 05				794.7
Jun 05	797.0	798.0	794.5	+13.0
Jul 05				794.7
Aug 05	794.0	795.2	794.0	+12.5
Sep 05				793.2
Oct 05				793.8
Nov 05				793.8

Est. sales Tue's sales 12482

Tue's open int. 119147

lbs 115.00-119.00, 450-500 lbs 106.00-112.50; 500-550 lbs 98.50-104.00, 550-600 lbs 96.00-99.00, 600-700 lbs 87.00-94.00.

Feeder heifers, medium and large 1-2 200-250 lbs 120.00-125.00; 250-300 lbs 117.00-125.00, 300-350 lbs 115.00-125.00, 350-400.

Harriman

• Continued from Page C1

the same in Chattanooga."

The EPB phone company is far different from the one Ms. Harriman's mother worked at for more than three decades at BellSouth and its corporate predecessors. Ms. Harriman, who began working at AT&T with her mother during summers while going to school, joined Ma Bell after graduating from the University of Tennessee in 1972. She worked a variety of jobs for both BellSouth and AT&T before leaving the phone giant in 1996 to join Adelphia's predecessor, Hyperion Communications Inc.

In her first four years, Ms. Harriman built the competitive local phone company into Nashville's biggest competitor to BellSouth.

By 2001, Adelphia had captured 37 percent of Nashville's business phone market and generated market sales of more than \$32 million.

To mark the company's success, Ms. Harriman negotiated an agreement with the Tennessee Titans to put the Adelphia name on Nashville's new football stadium.

Adelphia ultimately filed for bankruptcy because of alleged fraudulent activity by its founding family. The Adelphia name came off the Nashville coliseum, and the phone company lost much of its luster.

Because of the company's fiscal woes and the death of her mother, Ms. Harriman decided in 2003 to leave Adelphia and take some personal time to sort things out.

"I lost a lot of money in Adelphia stock after the bankruptcy, but I'm proud of what we were able to build in Nashville," she said.

After several months out of the phone business, Ms. Harriman said she is eager to get back in the business.

EPB Telecommunications, the 4-year-old telephone arm of Chattanooga's electric utility, offers Ms. Harriman another chance to build a major competitive phone operation in the state.

EPB is already the biggest competitive local exchange carrier to BellSouth with more than 2,500 customers, EPB Executive Vice President Ron Fugatt said. EPB, which has invested \$24 million in its telecom business, expects the business to turn a profit within two years.

"We're already generating an operating profit, and we hope to soon begin repaying our investment in the business," Mr. Priest said.

Ms. Harriman, who joined EPB on March 1, said she is eager to assess the phone and Internet divisions to help expand business services and improve the businesses' pricing structure.

"It's an exciting business, and EPB is a good company to build upon," she said.

E-mail Dave Flessner at dflessner@timesfreepress.com

NASDAQ - Over The Counter

Name	Div	Yld	Last	Chg.	Name	Div	Yld	Last	Chg.	Name	Div	Yld	Last	Chg.	Name	Div	Yld	Last	Chg.	Name	Div	Yld	Last	Chg.
* Continued from Page C4																								
Radbank			8.30	+14	StarNet			46.49	+09	Summa			13.54	-15	TimesData			3.96	+09	Vignette			2.07	-12
Rafim			11.00	+2.88	StarNetSys			11.53	+03	SupTech			2.30	-10	TimeSonic			2.31	-03	Village			7.99	+09
Ranger			13.98	-34	StarNetSys			36.49	+84	SupTech			12.80	-73	TimeSonic			15.86	+75	Village			3.98	+08
Ranger			7.80	-10	StarNetSys			55.38	+63	SupTech			16.68	+28	TimeSonic			22.98	-40	Village			3.03	+21
Ranger			32.58	+18	StarNetSys			10.24	+24	SupTech			11.01	-26	TimeSonic			14.75	-67	Village			27.04	+96
Ranger			93.33	-2.79	StarNetSys			52.88	-14	SupTech			17.29	-15	TimeSonic			3.80	-33	Village			3.77	-18
Ranger			7.58	-01	StarNetSys			12.94	+14	SupTech			4.08	-15	TimeSonic			4.07	-33	Village			3.77	-18
Ranger			29.72	-1.03	StarNetSys			32.44	-72	SupTech			35.11	+30	TimeSonic			7.30	-17	Village			7.10	-14
Ranger			171.08	+0.6	StarNetSys			5.13	+04	SupTech			48.30	-58	TimeSonic			2.55	+05	Village			6.15	+59
Ranger			4.47	-20	StarNetSys			16.06	-17	SupTech			17.54	+48	TimeSonic			9.24	+07	Village			20.09	+09
Ranger			2.08	+26	StarNetSys			37.83	+63	SupTech			3.98	-46	TimeSonic			7.25	+02	Village			7.84	-16
Ranger			17.18	-22	StarNetSys			12.90	+05	SupTech			20.73	-28	TimeSonic			14.79	-02	Village			28.82	-24
Ranger					StarNetSys			3.40	+09	SupTech			11.47	-15	TimeSonic			14.37	+06	Village			8.89	
Ranger					StarNetSys			12.77	+68	SupTech			17.54	-18	TimeSonic			23.33	-2.67	Village			23.73	-31
Ranger					StarNetSys			18.32	+27	SupTech			12.48	+16	TimeSonic			28.75	-83	Village			8.38	-33
Ranger					StarNetSys			11.67	-08	SupTech			38.79	-91	TimeSonic			7.25	-05	Village			10.0	0.5
Ranger					StarNetSys			17.58	-30	SupTech			14.68	-44	TimeSonic			21.28	-22	Village			7.30	-22
Ranger					StarNetSys			24.89	-39	SupTech			2.17	-02	TimeSonic			23.40	-15	Village			23.39	-52
Ranger					StarNetSys			34.38	-13	SupTech			79.35	-2.47	TimeSonic			6.35	-05	Village			8.25	-14
Ranger					StarNetSys			12.13	+01	SupTech			40.34	-14	TimeSonic			16.82	-13	Village			7.67	-41
Ranger					StarNetSys			19.25	+67	SupTech			40.79	-58	TimeSonic			22.83	-37	Village			11.83	-23
Ranger					StarNetSys			8.02	-13	SupTech			2.15	+02	TimeSonic			8.48	-18	Village			11.73	+68
Ranger					StarNetSys			3.79	-23	SupTech			16.53	-11	TimeSonic			48.05	-23	Village			11.07	+06
Ranger					StarNetSys			60.20	+58	SupTech			11.37	-08	TimeSonic			11.37	-08	Village			11.01	-11
Ranger					StarNetSys			28.17	+32	SupTech			8.28	+07	TimeSonic			25.84	-78	Village			12.92	+34
Ranger					StarNetSys			4.35	+44	SupTech			8.66	-78	TimeSonic			15.35	+05	Village			2.83	+04
Ranger					StarNetSys			10.45	+42	SupTech			3.42	-17	TimeSonic			10.80	-10	Village			35.00	-01
Ranger					StarNetSys			3.97	-11	SupTech			21.46	+32	TimeSonic			41.96	-15	Village			27.93	-38
Ranger					StarNetSys			8.57	+160	SupTech			63.37	+57	TimeSonic			9.15	-83	Village			5.14	+08
Ranger					StarNetSys			25.32	-64	SupTech			3.50	-17	TimeSonic			6.11	+12	Village			37.78	-13
Ranger					StarNetSys			4.13	+34	SupTech			3.95	-01	TimeSonic			11.34	+31	Village			48.47	-32
Ranger					StarNetSys			37.87	-16	SupTech			12.48	-28	TimeSonic			28.05	-19	Village			33.70	-30
Ranger					StarNetSys			24.78	-50	SupTech			7.32	-29	TimeSonic			13.92	+16	Village			2.17	-08
Ranger					StarNetSys			17.37	+22	SupTech			4.17	-29	TimeSonic			10.74	-29	Village			40.77	-09
Ranger					StarNetSys			47.38	-61	SupTech					TimeSonic					Village				

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 7th day of April, 2004.

Mark Smith, Esq.
Strang, Gletcher, Carriger, Walker, Hodge & Smith, PLLC
400 Building
One Union Square
Chattanooga, TN 37402-2514

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300



Henry Walker